

SOME OBSERVATIONS ON THE HISTORY OF AND THE ROLE AND DUTIES OF THE MANX VICAR GENERAL, CHANCELLOR & OFFICIAL PRINCIPAL

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The first statutory reference to a Vicar General in Man appears in an Act of Tynwald (the ancient Manx Legislative Assembly and which still exists and operates today as a modern and democratically elected body) namely section 3 of 'a book of spiritual laws and customs of the Island'.

'3. Alsoe that everyone that dyeth intestate that the boyy, or his Vicar General should constitute and ordaine his children, legitimately begotten to be jointly executors.'¹

In 1604 Bishop John Phillips called together a Convocation of the clergy and it was found that no spiritual laws had been properly codified. The codification which followed that Convocation was largely the work of the Vicars General.²

The origins of a Vicar General a Chancellor and an Official Principal in an English diocese are dealt with in a recent most interesting article by Chancellor Coningsby published in this journal.³

In it there is a reference to the report of the Commission on Ecclesiastical Courts set up by the two Archbishops which led to the passing of the Ecclesiastical Jurisdiction Measure 1963 (at page 10);

'The judicial function of a medieval bishop or archbishop were not the only functions belonging to his office which were performed by some other person on his behalf. When absent from his diocese he constituted one of his leading clerks as Vicar General to perform on his behalf acts pertaining to episcopal jurisdiction which the possession of episcopal orders was not necessary. . .'^{3a}

Such a person was thus constituted a Vicar General. Coningsby tells us that by degrees this temporary office became a permanent post of diocesan administration. He explains that from the sixteenth century onwards the person appointed Vicar General was also made Chancellor and sat in the Consistory Court. He did so also as Official Principal another office formerly a separate office. The Vicar General was one who exercised powers delegated to him by the Bishop (and was thus subject to episcopal control) i.e. to issue marriage certificates and other administrative duties. The Official Principal or Chancellor was not a true delegate of the Bishop (although appointed by him because as Official Principal or Chancellor he exercises the Bishop's judicial powers and consequently does

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1. A Book of Spiritual Laws and Customs of the Island 1417.
 2. Manx Spiritual Laws by Canon E. H. Stenning, M.A., - Isle of Man Natural History and Antiquarian Society publications.
 3. Ecclesiastical Law Journal number 10 January 1992 at page 273 and onwards.
 - 3a Report of the two Archbishops Commission on Ecclesiastical Courts 1954.

justice between parties in ecclesiastical causes). Whilst it is not possible to say when the Bishops of Sodor and Man began to delegate powers both administrative and judicial to a Vicar General or how gradual or otherwise this process was and exactly when it took place in Sodor and Man the term Vicar General appears colloquially (but also in some Manx Statutes) always to have been used alone to describe the ecclesiastical officials who not only performed the functions of an English Vicar General but also those pertaining to the officials who were described in England as Chancellor or Official Principal. *Undoubtedly they must have done so gradually from medieval times onward.*

Other ecclesiastical legal officials have been appointed in Man over the centuries, the Episcopal Registrar, the Sumner General, Archdeacons Official. The scope and duties of these and other local ecclesiastical legal officers are outside the scope of this paper. The Diocesan Registrar was a separate office in Man until 1929 when for reasons of economy the Vicar General was also appointed Registrar although in practice this meant the Registrar's functions were mostly carried out by a Deputy leaving the Vicar General to perform the judicial functions of his office, particularly when a Faculty application was disputed and a hearing with a judicial determination was required. In 1994 a separate Registrar was again appointed and the system reverted to its pre-1929 state.

The Manx Vicar General has in modern times (certainly for the past 150 years) been described in the deeds of his appointment as 'Vicar General, Chancellor, and Official Principal' and it is the case that the Manx Vicar General has always (since 1846) exercised his jurisdiction inclusive of that within the office of Chancellor and Official Principal and he is thus independent of the Diocesan Bishop when sitting in the Consistory Court as Coningsby confirms at page 278 of his article. Halsburys *Laws of England* (4th edition) volume 14 paragraph 1225 states that a *Diocesan Chancellor is a Queen's Judge in one of the Queen's Courts* and he is uncontrolled by the Bishop and as such he may hear and determine in the Consistory Court a cause in which the Bishop is himself interested. This statement accords with the Ecclesiastical Law of the Island and provides a necessary protection in the rare case of a diocesan bishop attempting to dictate the procedure to be adopted to deal with a Faculty Application. In my time as Manx Vicar General an attempt was made to summon me by witness warrant to attend a sitting of an Insular Government Committee which was considering the future of a Church within the diocese at a time when the Diocesan Consistory Court was considering a petition to demolish a church (under Manx Ecclesiastical Law as it then was). The Committee concerned subsequently accepted that the Vicar General when sitting as an Ecclesiastical Judge was not subject to their jurisdiction. Had the Committee persisted in attempting to enforce their warrant my remedy would have been to claim the protection of the island's Chancery Court as would also be the case in the event of unwarranted interference by a diocesan bishop. Before 1824 the two (sometimes three) Vicars General (always Clergymen) dealt with the bulk of what was (prior to the passage of the Manx Judicature Act in 1883) the then extensive work of the Ecclesiastical Courts which covered all if not more than that which

lay in the jurisdiction of Church courts in England until curtailed by Parliament. It is interesting to note that in her paper 'Spiritual Courts of the Isle of Man' Miss Anne Ashley writes in 1957 at page 53 'It is often recalled in Man that Lord King (Lord Chancellor in 1725) declared that if the ancient discipline of the Church were lost elsewhere it might be found in all its purity in the Isle of Man.'

The Manx Archdeacon (appointed formerly by the Lords of the Isle and latterly by the Crown and not as is generally the case in England by the Diocesan Bishop) assisted too in exercising the jurisdiction of the Church courts. A. W. Moore in his 'history of the Isle of Man' written at the beginning of this century states at page 845 of volume 2 of his work that:

'the Vicar General was appointed by the Bishop and held his office during the tenure of the See. Church courts in the eighteenth century were generally held in the Parish Churches and sometimes in secular buildings. In March 1709 the courthouse loft was so thronged that it fell down into the stable below with the officers, registrars and people ; but very few were hurt by it.'⁴

Today the Vicar General conducts his court in the Church which is the source of the business. From medieval times until 1922⁶ both the Archdeacon and the Vicar General were *ex officio* members of the Islands Legislative Council (originally the Lords Council of Advisers but now the upper house of the Tynwald the Bishop of Sodor and Man being the only remaining member of that body to sit *ex officio* with a vote. There is at present a proposal before the Manx Legislature that the Bishop whilst continuing to sit in the Council should lose his vote).

In modern times the Manx Vicar General appears to have taken an active part in legislative business and a perusal of Tynwald Debates in the latter part of the last century and in this century until 1922, when both the Archdeacon and the Vicar General lost their seats on the Council, confirms this. Both these church officials appear to have promoted particular legislative matters on many occasions.

Since 1846 the Bishop has appointed one Vicar General only and he has normally appointed a qualified lawyer sometimes a member of the Manx Bar and sometimes a lawyer qualified in other jurisdictions e.g. Ireland (before 1921) and England but since the turn of the century only from the members of the Manx Bar and this practise now has statutory sanction by virtue of the provisions of the Ecclesiastical Jurisdiction Measure 1963 as applied to Sodor and Man by section 8 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. The 1963 Measure as amended provides that the office of the Manx Vicar General may be filled by a Barrister, a Solicitor, or an Advocate of the Manx Bar, the minimum age for appointment being 30.

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4. Spiritual Courts of the Isle of Man – paper delivered by Miss Anne Ashley M.A., to the Isle of Man and Natural History Society in 1957.
 5. History of the Isle of Man by A. W. Moore Esq., M.A., Trinity College Cambridge and Speaker of the House of Keys (the Lower Branch of Tynwald) volume 2 at page 845 published in 1900.
 6. Isle of Man Constitution Amendment Act 1919 (Act of Tynwald).

The office of Manx Vicar General has to be vacated upon the holder attaining the age of 72 although the Diocesan Bishop may retain his services until he is 75 if he thinks fit. The Vicar General can resign and may be removed from office in the manner prescribed in the 1963 Measure as amended and applied by Tynwald to Sodor and Man. To be removed, the delinquent Vicar General must be incapable of acting or unfit to act. Section 8(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure (as applied to Sodor and Man) does however exempt Chancellors from the retirement age where their appointment predates 1994. It is I may say particularly appropriate that in a small diocese the Ecclesiastical Judge's judicial independence is fortified in these ways as is now the case in England.

It is indeed advisable for the position of Manx Vicar General to be held by a practitioner who is 'learned in the law and practice of the Isle of Man' because the measures of General Synod do not automatically apply within Sodor and Man, quite apart from the additional fact that Manx Common and Statute Law differs in certain areas from that in force in England. A recent article by K. F. W. Gumbley Esq., M.A. (a Solicitor and Secretary of the Legislative Committee of the Sodor and Man Diocesan Synod)⁷ outlines (*inter alia*) the way in which the Manx Church is now organised and he tells us that the Sodor and Man Diocesan Conference was in 1925 given power to initiate church legislation in the form of Acts of Tynwald to apply measures of General Synod to the Isle of Man. In 1993 the Church Legislative Procedure Act (an Act of Tynwald) brought Manx legislative procedures into line with those which have operated in England since 1920 under the Enabling Act of 1919.

We know little about the medieval clerical Vicars General but we do know that they (along with the Bishop who often sat with them on the bench) had the power to excommunicate and to deal with many matters both civil and criminal including marriage, sexual misdemeanours, witchcraft, non attendance at Church and school, drunkenness and fighting, the spilling of blood in the Church or churchyard and other church matters including taking the Churchwardens' annual oath on appointment at the Vicar General's Chapter Court held each year and to which Court presentments for breaches of Church discipline could be made. Today the modern Manx Vicar General sits only in his annual Chapter Court to take the Wardens' oaths (it is thought that only he can remove a Warden for misconduct sitting in the Chapter Court)^{7a} and to address them on their duties and in the Consistory Court, which Court now deals with all church business which remains within his jurisdiction. When sitting in the Consistory Court his duties are an almost exact counterpart of those exercised by a Diocesan Chancellor and Official Principal of an English diocese.

The most feared punishment meted out by the Manx Ecclesiastical Courts up to about the beginning of the last century was imprisonment in the ecclesiastical prison under the medieval cathedral of St. German's in Peel Island (now in ruins since the seventeenth century) near the Town of Peel. Craine tells us that:

7. Church Legislation in the Isle of Man by K. F. W. Gumbley Esq., M.A., – revised version of 'Introduction to Manx Church Legislation' published in Douglas 1993 and also in Manx Law Bulletin June 1992 and also in this Journal Volume 3 No. 15 at page 240.

7a Duties of Church Wardens in Sodor and Man address by Vicar General Farrant delivered to Sodor and Man Chapter Court 1994.

'imprisonment in the ecclesiastical prison was a most unpleasant ordeal and that in 1812 William Faragher refused on some point of principle to pay his accustomed tithes and was committed to St. German's until he found sureties for his compliance. For eleven long months he fought a battle of which the result was certain. Then broken in body he admitted defeat.'⁸

One of the greatest Bishops to occupy the See of Man was Bishop Wilson whose episcopacy lasted from 1698 to 1755 a period of some 58 years. Bishop Wilson we know took his judicial responsibilities very seriously and eventually his lofty independence brought him and his two Vicars General Walker and Curphey (both Clergymen) into conflict with the state in the person of the Lord of Man's Lieutenant Governor, a man called Horne.

In 1722 Governor Horne imprisoned Bishop Wilson and his two Vicars General in Castle Rushen (another grim fortalice within the Town of Castletown in the South of the Island and then the seat of the Island's government) for an alleged contempt of Court in failing to pay fines imposed by the insular civil courts at the suit of Governor Horne and his Council.

The story behind the imprisonment is interesting, even amusing (though not no doubt to the three incarcerated Reverend Defendants). The Manx Historian A. W. Moore writes about this dispute between the Bishop and the Governor in considerable detail. The dispute concerned the right of the Archdeacon (a Governor's appointee) to admit the Governor's wife who the Bishop had ordered should not be admitted to communion until she apologised for slandering another lady who had been found by the Bishop's Court to be blameless of the conduct imputed to her.⁹

The Bishop's two Vicars General were a party to the alleged contempt so they too spent some nine weeks in Castle Rushen until the Privy Council in London ordered that they all be released. Vicar General William Walker (born 1679 died 1729) seems to have been a schoolmaster who took orders and was ordained in 1700 and appointed a Vicar General in 1712. Vicar General Walker along with Bishop Wilson employed their time in prison translating the bible into Manx (in many cases the sole language of the Manx people of those days). A law suit arose out of the imprisonment and Walker had to go to London on a number of occasions and during one of these visits he had the degree of LL.D. conferred upon him by Archbishop Wake.¹⁰

The dispute between the civil power in the person of Governor Horne and Bishop Wilson was really the culmination of the long running battle between church and state which had started in medieval times when the Lords of Man objected to the burgeoning power of the Church over the people. The late Miss Anne Ashley appears to have thought that the dispute had its origins in a dispute over the respective jurisdiction of the Spiritual Courts over members of the Lords Garrison who were transient members of the community and those whose permanent residence was in the Island. Whilst the Stanley family (later

8. Mananans Isle by D. Craine Esq., M.A.C.P. published by the Manx Museum and National Trust in 1955.

9. History of the Isle of Man by A. W. Moore Esq., M.A., Volume 1 at pages 493-8.

10. 'Manx Worthies' publication compiled by A. W. Moore Esq., M.A., in 1901.

Earls of Derby) abolished the right of sanctuary they took no steps to abolish the right to claim 'benefit of clergy' until much later but they did confirm the right of the Bishop of Sodor and Man to hold a Court for his own demesne with powers of life and death. It is thought that the Ecclesiastical Courts of Man date from this time.¹¹

In the course of history varying opinions have been expressed on the standard of ecclesiastical justice administered by the Bishops of Sodor and Man and their clerical Vicars General. In 1767 a report was submitted to the Lords of the Treasury on 'The Present State of the Isle of Man' by one who described himself as 'an impartial hand' (now filed in the Manx Museum and believed to have been written by the then Attorney General of England a Mr C. Searle [marked *Salus Populi, Suprema lex!*]) This report took a very adverse view of the Islands spiritual courts. The Attorney referred to them as:

'avowed enemies to liberty and peace the spiritual court exults here in its fullness of power and despotism'.

After criticising the arrogance of the Manx Ecclesiastical Judges he ended his report by saying:

'from hence it is plain how strangely the ends of all government is perverted when ecclesiastical and civil power go hand in hand toruin the peace of the subject and when what one cannot effect by its tyranny and usurpation and other supplies by its weakness and partiality. . .'¹²

In Professor Kermodé's interesting work 'Devolution at work – a case study of the Island of Man' he contrasts the present flourishing condition of the Isle of Man with the Isle of Wight, the Isle of Scotland and Anglesea, none of which he said enjoy the benefits of the regional government now enjoyed by the Isle of Man.¹³

I would submit that Professor Kermodé's work on devolved government in the Isle of Man shows that no long term permanent damage was done to the Manx state and its society in the eighteenth century irrespective of whether Attorney General Searle's strictures were true or not. It is fashionable today to condemn the harshness of the administration of justice through the civil and ecclesiastical courts in Bishop Wilson's day and indeed for the next century. The Reverend Hugh Stowell in his life of Bishop Wilson published in 1822 when describing Bishop Wilson's conduct as an ecclesiastical judge writes

'when society is just emerging into enlightened knowledge the rules and regulations which are necessary for its government are far different from what is required in a more advanced state of civilisation, in order to form a just estimate of men and measures it is necessary to judge of them by the prevailing principle and manners of the time . . . whatever errors therefore may appear to have prevailed in his ecclesiastical administration may be fairly considered as errors of the times rather than of the man.'¹⁴

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11. Miss Anne Ashley's paper on 'Historic Relations of Church and State in the Isle of Man considered as the background of Bishop Wilson's controversy' delivered to Isle of Man and Natural History and Antiquarian Society in November 1955.
 12. A short view of the present state of the Isle of Man humbly submitted to the consideration of the Right Honourable the Lords of His Majesty's Treasury by an impartial hand printed in the year 1767.
 13. *Devolution at Work – a case study of the Isle of Man* published by Professor Kermodé of Birmingham University in 1978.
 14. *Life of the Right Reverend Thomas Wilson D.D.*, by the Reverend Hugh Stowell, Rector of Ballaugh, Isle of Man published in 1822.

In my lifetime capital punishment was thought of as an essential part of the criminal law of the UK but capital punishment has now been abolished not only in the United Kingdom but recently (1990) even in the Isle of Man although the last execution here was carried out in 1871.

What kind of verdict are we to pronounce on the old exercise of the enforcement of the moral law by the Bishop and his Vicars General in their ecclesiastical courts? Craine¹⁵ writes that after 1780 (when the Courts last exercised their powers to commit):

‘the system of penance by coercion which John Wycliffe more than four hundred years ago before had denounced to be wrong and anti christian come to a belated and unregretted end.’

The late local historian Neil Mathieson who had examined the records of the ecclesiastical courts of the Island over the centuries wrote in a paper which he delivered to the Isle of Man and Natural History and Antiquarian Society in 1937 as follows:

‘the records of the Ecclesiastical Courts in the Isle of Man between 1688 and 1874 tells us not only of offences and punishments; they speak of dramas played in every church and recall long forgotten stories of love and hate . . . punishment was not of course the main object, which was the reformation of sinners. First offenders were frequently forgiven. . .’

Mathieson’s verdict on those courts and their justice might be summarised by the quotation from the end of his paper where he refers to a case brought in 1781 against a Churchwarden accused of lending sacramental vessels from a parish church to the Reverend John Wesley so that he might use them in his meeting house. Mathieson concludes by telling us that this charge was dismissed on the technicality that the complainant did not appear and he asks:

‘can there be a better example to prove that the Court was neither vindictive or narrow minded’

I would hope that a similar verdict would be given on the conduct of today’s Manx Ecclesiastical Courts.

I have so far written of the Ecclesiastical Courts in medieval times and up to the end of the eighteenth and early nineteenth century. In 1874 Tynwald passed an Act entitled the Ecclesiastical Court’s Act 1874 and under that Act the jurisdiction of the Archdeacon’s Court was transferred to the Bishop’s Courts and thereafter the Vicar General who by now was a qualified lawyer and not a clergyman administered ecclesiastical justice in the Consistory Court, the Chapter Court and the Vicar General’s Court. In 1876 the then Manx Attorney General Sir James Gell was asked to submit his views to the Lieutenant Governor of the Island and subsequently to the Royal Commission on the Ecclesiastical Courts (1883) with respect to the best mode of transferring such part of the business of the Ecclesiastical Court as was not purely spiritual to the Temporal Courts and for this purpose he reviewed what the Ecclesiastical Courts then were and what their jurisdiction was. He gave it as his opinion that the spiritual jurisdiction embraced the government of the church, the discipline of the clergy including questions of heresy and doctrine, the discipline of the laity which he said was a branch of the spiritual jurisdiction, and the conduct of divine worship. He defined the ecclesiastical jurisdiction as comprising all

15. Craine’s *Mananans Isle* at page 148.

16. *Ecclesiastical Courts in the Isle of Man (Abridged)* by Neil Mathieson page 261 *Isle of Man and Natural History Society’s Proceedings Volume V* at page 261 and page 270.

matters relating to tithe, church rates, clergy dues and fees, parish clerks' dues and fees, the church officers dues, the election and admission of Churchwardens, faculties and the Sequestration of livings.¹⁷

The Attorney's definition of the Ecclesiastical Jurisdiction included also glebe houses, dilapidations, the valuation of crops on glebe lands and parish registers. The Temporal Jurisdiction of the Ecclesiastical Courts lay in probate business, debts due to or by the estate of deceased persons, the recovery of legacies and residue of the estates and the administration and winding up of estates of deceased persons and in addition the following matters which the Attorney said were peculiar to the Isle of Man, namely (1) guardianship of minors (2) matrimonial causes (this jurisdiction was similar to that exercised by the Ecclesiastical Courts in England before the Divorce Court was constituted the causes being for divorce *a mensa et thoro* for adultery and nullity of marriage) together with affiliation and maintenance of illegitimate children.

In dealing with the Courts which then existed the learned Attorney referred to the Vicar General's Court which he said was one of summary jurisdiction and which dealt with the recovery of debts. The Chapter Court was one where wills were proved and letters of administration granted summarily beside the control which the Court exercised over Churchwardens to which I have already referred. In some cases such as disputed wills the depositions were ordered to be taken by the Chapter Court and thereafter the case was disposed of in the Consistory Court. The Attorney gave his view that the Consistory Court was the principal Ecclesiastical Court with a general jurisdiction in all matters of ecclesiastical cognizance. The proceedings and in former times the Bishop frequently sat in this Court along with the Vicars General. There was also an official who was known as the Registrar of the Court called the Episcopal Registrar. He kept the records of the Court and made distributions of estates when ordered by the Court so to do.

As a result of the Attorney's advice at that time and following English procedure the Isle of Man Judicature Act (Ecclesiastical Civil Judicature Transfer Act) was passed in 1884. This Act abolished the Temporal Jurisdiction of the Ecclesiastical Courts leaving only the jurisdiction in bastardy to the Vicar General.

At the present time the Manx Vicar General presides only in the Consistory Court which deals with all the spiritual and ecclesiastical litigation of the diocese. The Chapter Court as I have said still sits annually to take the oaths of the Wardens and to receive presentments although no presentments have been made in the Chapter Court for many years. But it is interesting to note that in 1955 the Chapter Court held (on the complaint of the vicar concerned) that a warden could not be sworn because in a parochial district (as opposed to an ancient parish) the consent of the vicar had to be obtained, and that no such consent had been obtained, thus invalidating the reported election of the warden concerned at the parish meeting. In this respect Manx law differs from the practice in England where the Wardens oaths are usually taken by the Archdeacon.¹⁸

From very early times the Manx Vicar General along with the Bishop and the Archdeacon were members of the non elected Legislative Council (the upper house of Tynwald) and as such the Vicar-General was one of the

17. Opinion of Sir James Gell, Attorney General of the Isle of Man addressed to the Lieutenant Governor dated 9 December 1896 and filed in the Diocesan Registry.

18. Halsburys Laws of England 4th Edition Volume 14 paragraph 546.

political rulers of the Isle of Man. Since about the middle of the nineteenth century the Manx Vicar General's political and civil powers have one by one been removed from him. In 1922 the Archdeacon and the Vicar General ceased to be members of the Legislative Council and finally the Vicar General's last remaining civil jurisdiction in bastardy was removed in 1921.¹⁹

The Vicar General however, still takes his part in the very ancient annual Tynwald ceremony by accompanying the Manx Clergy duly robed to the Tynwald Church Service and subsequent open air public ceremony on Tynwald Hill where it is said that the ceremony has been held for at least one thousand years.

Since 1921 then the Manx Vicar General's duties are now as follows; (1) his duty to hold Chapter Courts and to receive the Wardens' appointments and presentments (if any); (2) his duty to preside over the sittings of the Consistory Court in cases of dispute and also to deal with unopposed matters involving alterations to the fabric or contents of churches, to churchyards and the tombs therein and consecrated burial grounds, and also to deal with the introduction of ornaments within the church. Generally speaking the jurisdiction exercised by the Manx Vicar General in the Consistory Court is identical to that of a Chancellor sitting in an English Diocese including the disciplinary jurisdiction under the 1963 measure as amended. No clergy discipline case has come before the Manx Vicar General in living memory. Perhaps we have progressed beyond the days when in 1634 a curious case was recorded during Bishop Foster's visitation concerning a Vicar who, although a married man had 'gatt a wench with child.' His punishment by the Ecclesiastical Court was that he was enjoined 'to build a bridge upon the burne in our Parish.' The making of the bridge was to be the means of approach to heaven, the whitening of the soul instead of the white sheet! All appeals are to the Chancery Court of York but there is no record of such an appeal during this century.²⁰

In the Isle of Man Manx Law Reports are now produced and all Manx Consistory Court cases which have been heard in open Court and where a judgment has been delivered are reported in those reports.

The Vicar General is also a surrogate and he is able to issue marriage certificates. It has recently been suggested that an Incumbents (Vacation of Benefices) Measure should be enacted in the Island but at the time of writing the Diocesan Synod has not yet agreed to the passage of this legislation largely on the grounds of cost.²¹ If such a Measure eventually becomes law in Sodor and Man a Chairman for the Tribunal set up by the Measure will be appointed by the Vicar General of York from outside the Diocese. The Diocesan Legislative Committee is also at present considering the application of the Incumbents (Disability) Measure to the Isle of Man. If this Measure becomes law in the diocese the Manx Vicar General will become Chairman of the Tribunal to conduct the enquiry required under sections 1 and 2 of the Measure.²²

19. The Judicature Amendment Act 1921 (an Act of Tynwald).

20. Journal of the Manx Museum March 1932.

21. Incumbents (Vacation of Benefices) Measure 1977 as amended by the 1993 Measure of General Synod.

22. The Incumbents (Vacation of Benefices) Measure 1977 Church Legislation Procedure Act 1993 an Act of Tynwald.

Whilst this paper has been chiefly concerned (with some digressions) with the Manx Vicar General's office I think I should ask and try to answer the question whether the Manx Consistory Court and its officers have a future. To some extent the answer to this question will be answered in the Church of England as a whole (probably through General Synod) and we are therefore in the Isle of Man largely linked to our colleagues in the United Kingdom.

Whilst in medieval times and possibly the seventeenth century the Church of England in the Isle of Man could be regarded as a separate Church that is not the case today as economic circumstances have dictated otherwise, although at least two attempts to annex the diocese to an English diocese have failed due to the successful opposition of Church members here.

For a justification of the existence of the Consistory Court and the continued exercise of its jurisdiction I cannot do better than to quote from Chancellor G. H. Newsom Q.C.'s excellent book *Faculty Jurisdiction of the Church of England* first published in 1988 where he writes on page two:

'The effect of land buildings or goods being under the jurisdiction of the ordinary is that no material alteration can be made in any of them except under the authority of a faculty decreed by the Ecclesiastical Courts'.

The learned author goes on to cite Lord Penzance as Dean of Arches giving judgment in *Nickall & Brice* (4c [1892] 269 at page 283)

'The sacred edifice has a future as well as a past. It belongs not to any one generation nor are its interests and condition the exclusive care of those who inhabit the parish at any one period of time.'

Chancellor Newsom concludes by saying that the task of the Ecclesiastical Courts in exercising the faculty jurisdiction is to ensure that the sacred uses are protected, that the parishioners are duly consulted and that the wider aesthetic interests of the public are considered, but remembering always that a church is a place of worship and not a museum. He advises that the Court in carrying out these duties must obtain and follow the best advice and they must authorise and supervise changes as times change. He concludes by saying 'these various objectives are not always obviously consistent the task of the Chancellor is to weigh them all and to reach a just conclusion in each case. He is not an ecclesiastical civil servant but a judge.'²³

The principles laid down by Chancellor Newsom apply equally in a small diocese as they do in the larger dioceses and with the growth in population and economic importance of the Isle of Man over the years ecclesiastical legal business is likely to increase rather than decrease and that has certainly been my experience since my appointment in 1973.

I believe that the existence and powers of the Church of England Consistory Courts is something which is envied by other churches because the existence of an independent ecclesiastical court introduces a measure of stability where the church is concerned and enables parishioners to prevent excesses of action whether this stems from other eccentric parishioners or where there has been an abuse of power by the clergy. I believe that the ecclesiastical courts will continue to exercise their jurisdiction in the future as they have in the past to the general benefit of the members of the Church of England whether in the Isle of Man or elsewhere.

23. *Faculty Jurisdiction of the Church of England* by Chancellor G. H. Newsom Q.C. 2nd ed. 1993.